

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL EHLERS,

Claimant,

vs.

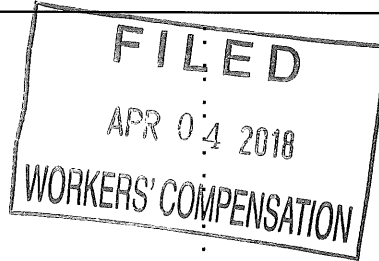
ENDRES/RECONSERVE OF IOWA,
INC.,

Employer,

and

COMMERCE & INDUSTRY INS. CO.,

Insurance Carrier,
Defendants.



File No. 5062738

ALTERNATE MEDICAL
CARE DECISION

HEAD NOTE NO: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Michael Ehlers. Claimant appeared personally and through attorney, Bob Rush. Defendants appeared through their attorney, Jean Dickson.

The alternate medical care claim came on for hearing on April 3, 2018. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 1 and defense exhibits A and B, which were received without objection. The defendants do not dispute liability for claimant's September 2014, work injury.

ISSUE

The issue presented for resolution is whether the claimant is entitled to return to the authorized treating physician.

FINDINGS OF FACT

The claimant sustained an injury to his right knee on or about September 9, 2014. James Pape, M.D., became claimant's authorized treating physician. Mr. Ehlers also allegedly injured his left knee in 2016, although no medical care claim has been filed on this injury.

A right total knee replacement was performed in February 2017. Mr. Ehlers testified that he has had treatment and routine follow up visits with Dr. Pape since the surgery.

In January 2018, Mr. Ehlers had an independent medical evaluation (IME) with Farid Manshadi, M.D. (Defendants' Exhibit A) Dr. Manshadi reviewed the records, examined the claimant, and prepared a report with expert medical opinions on behalf of Mr. Ehlers on February 5, 2018. He opined that Mr. Ehlers had a 50 percent impairment of his right knee. He further opined that he did not "recommend any additional treatment for either injury." (Def. Ex. A, p. 6)

Mr. Ehlers testified that an appointment had been arranged for March 21, 2018, to see Dr. Pape, for some type of final visit. Although the questioning was somewhat leading, claimant contended that this was a one year follow-up appointment from the surgery arranged by Dr. Pape's office. Before the visit occurred, Dr. Pape's office called claimant and cancelled the appointment, stating that it was not authorized by the insurance carrier. In his testimony, Mr. Ehlers expressed a desire to follow up with Dr. Pape.

Defendants took the position that since claimant's own IME physician, Dr. Mansahdi, had recommended no further treatment, the follow up appointment with the authorized treating provider was unnecessary.

REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code section 85.27 (2013).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's statutory right is to select the providers of care and the employer may consider cost and other pertinent factors when exercising its choice. Long, at 124. An employer (typically) is not a licensed health care provider and does not possess medical expertise. Accordingly, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994).

Based upon the record before me, I disagree with the defendants' interpretation of Dr. Manshadi's IME report. Defendants have chosen to interpret Dr. Manshadi's statement that he did not "recommend any additional treatment" to mean that he did not need to attend a routine follow-up visit with the authorized treating physician. It appears to me that Dr. Manshadi was simply expressing his opinion that there is no substantive treatment which will improve claimant's condition moving forward. He did not opine that scheduled appointments should be cancelled.

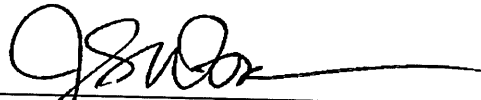
I further find that even if Dr. Manshadi opined that the follow-up appointment is unnecessary, Mr. Ehlers is entitled to return to his authorized treating physician for a final visit. The authorized treating medical provider is the individual who directs the medical care, not the claimant's IME physician. Dr. Pape's office had arranged this follow-up appointment for March 21, 2018, and I view this as a treatment recommendation in and of itself, which should not be overruled arbitrarily, even by the claimant's chosen IME physician.

ORDER

THEREFORE IT IS ORDERED:

The claimant's petition for alternate medical care is GRANTED. Defendants shall immediately authorize a follow-up appointment with Dr. Pape.

Signed and filed this 4th day of April, 2018.


JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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